

facilities, staffing, the ordering of supplies or equipment, and maintenance.

(2) *Disputes involving unreasonable dialing delay.* In disputes between providing local exchange carriers (LECs) and competing providers involving unreasonable dialing delay in the provision of access to operator services and directory assistance, the burden of proof is on the providing LEC to demonstrate with specificity that it is processing the calls of the competing provider's customers on terms equal to that of similar calls from the providing LEC's own customers.

[61 FR 47350, Sept. 6, 1996, as amended at 64 FR 51911, Sept. 27, 1999]

EFFECTIVE DATE NOTE: At 64 FR 51911, Sept. 27, 1999, § 51.217 was amended by revising paragraph (c)(3). This paragraph contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

#### **§ 51.219 Access to rights of way.**

The rules governing access to rights of way are set forth in part 1, subpart J of this chapter.

#### **§ 51.221 Reciprocal compensation.**

The rules governing reciprocal compensation are set forth in subpart H of this part.

#### **§ 51.223 Application of additional requirements.**

(a) A state may not impose the obligations set forth in section 251(c) of the Act on a LEC that is not classified as an incumbent LEC as defined in section 251(h)(1) of the Act, unless the Commission issues an order declaring that such LECs or classes or categories of LECs should be treated as incumbent LECs.

(b) A state commission, or any other interested party, may request that the Commission issue an order declaring that a particular LEC be treated as an incumbent LEC, or that a class or category of LECs be treated as incumbent LECs, pursuant to section 251(h)(2) of the Act.

### **Subpart D—Additional Obligations of Incumbent Local Exchange Carriers**

#### **§ 51.301 Duty to negotiate.**

(a) An incumbent LEC shall negotiate in good faith the terms and conditions of agreements to fulfill the duties established by sections 251 (b) and (c) of the Act.

(b) A requesting telecommunications carrier shall negotiate in good faith the terms and conditions of agreements described in paragraph (a) of this section.

(c) If proven to the Commission, an appropriate state commission, or a court of competent jurisdiction, the following actions or practices, among others, violate the duty to negotiate in good faith:

(1) Demanding that another party sign a nondisclosure agreement that precludes such party from providing information requested by the Commission, or a state commission, or in support of a request for arbitration under section 252(b)(2)(B) of the Act;

(2) Demanding that a requesting telecommunications carrier attest that an agreement complies with all provisions of the Act, federal regulations, or state law;

(3) Refusing to include in an arbitrated or negotiated agreement a provision that permits the agreement to be amended in the future to take into account changes in Commission or state rules;

(4) Conditioning negotiation on a requesting telecommunications carrier first obtaining state certifications;

(5) Intentionally misleading or coercing another party into reaching an agreement that it would not otherwise have made;

(6) Intentionally obstructing or delaying negotiations or resolutions of disputes;

(7) Refusing throughout the negotiation process to designate a representative with authority to make binding representations, if such refusal significantly delays resolution of issues; and